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April 5, 2004

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: RM-10865/DA No. 04-700 --**  
**Comments on the CALEA Petition for Rulemaking**

Dear Secretary Dortch:

I submit these comments on behalf of the New Jersey Division of Criminal Justice, in support of the U.S. Department of Justice's ("DOJ"), Federal Bureau of Investigation's ("FBI"), and U.S. Drug Enforcement Administration's ("DEA") Joint Petition ("Petition") filed on March 10, 2004, before the Federal Communications Commission ("FCC") requesting that the FCC resolve, on an expedited basis, various critically important issues arising from the implementation of the Communications Assistance for Law Enforcement Act ("CALEA").

It is vitally important, and consistent with Congress's intent in enacting CALEA, that the FCC initiate a rulemaking proceeding and adopt the rules proposed by the DOJ, FBI, and DEA in the above Petition. Congress enacted CALEA in 1994 to insure that law enforcement has the ability to conduct authorized wiretaps in the future as technologies changed. Since 1994, many new communications technologies have been brought to the market place, including broadband Internet access, Voice over IP telephony ("VoIP"), push-to-talk digital dispatch services, and other packet mode services. These services, currently used by millions of American citizens,



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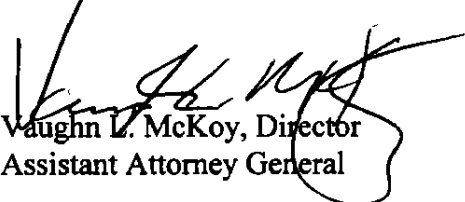
pose a great challenge to federal, state and local law enforcement in that many such providers of these communications services have failed to voluntarily adopt currently available CALEA intercept solutions. Thus, law enforcement has been thwarted in its attempts to implement lawfully authorized surveillance intercepts. Voluntary industry compliance with CALEA does not work.

The New Jersey Division of Criminal Justice has a thirty-four year history of successfully investigating and prosecuting crimes and protecting the citizens of this state through the judicious use of electronic surveillance intercepts. These investigative techniques are employed **only** when all other investigative methods have failed or been exhausted. The emerging technologies are hampering our ability to continue investigations into criminal organizations that are using the Internet and packet services to further their criminal enterprise. A failure to provide this agency with the tools needed to continue our investigations will result in a diminished capacity to carry out our public safety mandate.

Furthermore, the New Jersey Division of Criminal Justice is an ardent supporter of the cooperative effort that federal, state and local law enforcement have entered into for the development of intercept solution standards. This agency does not have the financial or personnel resources to develop costly *ad hoc* surveillance solutions for each new communications service. The focus of CALEA was the preservation of surveillance capability in the changing communication market place. For all equipment, services, and facilities deployed after January 1, 1995, Congress, through CALEA, expressly passed the burden of designing and paying for such surveillance solutions onto the telecommunications carriers themselves.

Given the importance of the issues discussed, it is important that the FCC promptly act upon the Petition and commence a rulemaking proceeding adopting the DOJ's, DEA's and FBI's proposed rules to support law enforcement and public safety efforts throughout this country.

Very truly yours,

  
Vaughn L. McKoy, Director  
Assistant Attorney General

c: Honorable Peter C. Harvey, Attorney General